

§ 1738.20

area receiving local exchange telephone service from an RUS telecommunications borrower to any entity other than the incumbent RUS telecommunications borrower if, not later than 90 days after RUS receives an application proposing to provide broadband service in the borrower's local exchange service territory, the incumbent RUS telecommunications borrower submits to RUS a letter of intent to provide or begin to construct residential broadband service in its local exchange service territory prior to October 1, 2004. The incumbent RUS telecommunications borrower must provide, prior to October 1, 2004, support of their intent to provide broadband service through submitting either a loan application to construct broadband facilities or proof that construction of broadband facilities has begun. Thereafter, unless the RUS telecommunications borrower has constructed or begun to construct broadband facilities in its service area, RUS will consider an application for a loan under this part to provide the broadband service in an area served by an RUS telecommunications borrower according to the criteria for determining broadband availability in § 1738.11(b) of this part.

(h) RUS will not approve loans to more than one applicant to provide broadband service within the same eligible rural community, nor to an applicant proposing to provide service in a community served by a borrower using funds under this part regardless of the definition of broadband service at the time of loan approval.

(i) If an unadvanced loan, or a portion thereof, is rescinded, a new loan shall not be made to the same applicant for the same purposes as in the rescinded loan.

§ 1738.20 Credit support requirement.

(a) To be eligible for a loan, RUS will require an applicant to provide credit support in an amount equal to 20 percent of the requested loan amount.

(b) The applicant must have, as part of the minimum 20 percent requirement, cash or, in the case of State and local governments, cash equivalents in an amount equal to operating expenses for the first full year of providing serv-

7 CFR Ch. XVII (1-1-04 Edition)

ice, as determined by a feasibility study satisfactory to RUS. This cash requirement will be waived for applicants operating as telecommunications companies which have positive cash flow for the two calendar years immediately preceding the date of application.

(c) The remainder of the minimum requirement can be met by undepreciated assets which would normally be financed as part of a loan under this part, additional cash or cash equivalents, licenses, or an unconditional letter of credit, or the equivalent, satisfactory to RUS.

(d) For purposes of this section, assets and licenses will be valued based on the lower of cost or market value, net of liens or other obligations of payments for those assets and licenses.

§ 1738.21 Interim financing.

(a) Upon notification by RUS that an applicant's application is considered complete, the applicant may enter into an interim financing agreement with a lender other than RUS or use its own internally generated funds for interim construction.

(b) For an applicant to preserve the option of obtaining loan funds for reimbursement of interim financing, the following procedures must be followed:

(1) Interim construction shall be conducted in accordance with RUS Bulletin 1738-2 and 7 CFR part 1788, except that the applicant shall not begin interim construction until all necessary licenses, permits, and other governmental approvals have been obtained;

(2) Equal employment opportunity requirements apply to interim construction. See RUS Bulletin 20-15: 320-15; and

(3) Interim construction shall be covered by an Environmental Report prepared in accordance with 7 CFR part 1794 and approved by RUS.

(c) RUS approval of interim financing is not a commitment that RUS will make loan funds available.

§ 1738.22 Loan security.

(a) RUS makes loans only if, in the judgment of the Administrator, the security therefore is reasonably adequate and the loan will be repaid within the time agreed.

(b) RUS generally requires that an applicant provide RUS with a first lien, in form and substance satisfactory to RUS, on all of the applicant's property and such additional security as RUS may require. If necessary, RUS will share in the first lien with another lender provided the RUS loan is adequately secured and will be repaid within the time agreed.

(c) Unless otherwise approved by RUS, the applicant shall purchase and own the collateral for the loan free from liens or security interests, other than those securing the RUS loan.

(d) In the case of loans that include the financing of broadband facilities that do not constitute self-contained operating systems or units, the applicant shall, in addition to the mortgage lien on all of the applicant's facilities financed by RUS, furnish adequate assurance, in the form of contractual or other arrangements, satisfactory to RUS, that continuous and efficient broadband service will be rendered.

(e) Beginning with the first calendar year following the end of the forecast period, RUS will require the recipient of a broadband loan to maintain, at a minimum, a TIER at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but at least 1.25 and not greater than 2.0.

(f) Additional financial, investment, operational, and managerial controls appear in the loan documents required by RUS.

§§ 1738.23—1738.29 [Reserved]

Subpart C—Types of Loans

§ 1738.30 Rural broadband access loans and loan guarantees.

(a) Direct cost-of-money broadband loans shall bear interest at a rate (the "Cost of Money Interest Rate") equal to the cost of borrowing to the Department of Treasury for obligations of comparable maturity. The Cost of Money Interest Rate will be provided by RUS when the funds are advanced to the borrower.

(b) Direct 4 percent broadband loan.

(1) To be eligible for a direct loan bearing an interest rate of 4 percent,

the applicant must be proposing to serve:

(i) A community that:

(A) Has a population of less than 2,500 inhabitants;

(B) Is not currently receiving broadband service as set forth in § 1738.11(b)(1) of this part, and

(C) Is located in a county with per capita personal income that is less than or equal to that percent of the national average per capita personal income which RUS will publish in the FEDERAL REGISTER at the beginning of each fiscal year. County per capita personal income as a percent of the national average per capita personal income is published by the Bureau of Economic Analysis, U.S. Department of Commerce, at <http://www.bea.doc.gov/bea/regional/reis/>. RUS will use the most recent statistics published on October 1 of the fiscal year in which the application is deemed complete by RUS; and

(ii) A service area with a certain maximum population density, calculated as the total number of persons in the service area divided by the square miles of the service area. The maximum population density requirement will be published by RUS in the FEDERAL REGISTER at the beginning of each fiscal year.

(2) The total amount of financing made available by RUS, in each fiscal year, for direct loans bearing an interest rate of 4 percent and the maximum of any one loan will be published by RUS in the FEDERAL REGISTER at the beginning of each fiscal year.

(3) When an approved application exceeds the maximum amount of 4 percent financing that may be made available to the borrower, a direct loan made at 4 percent may be made simultaneously with a "Cost-of-Money Interest Rate" loan.

(4) A 4 percent direct loan may be made simultaneously with a Cost-of-Money Interest Rate loan or a private loan guarantee.

(c) Private loan guarantees. A private loan guarantee shall bear interest at a rate set by the lender consistent with the current applicable market rate for a loan of comparable maturity.

(1) A private loan guarantee is available to any legally organized lending agency which includes commercial